

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: February 24, 1998

TO : William C. Schaub, Regional Director
Region 7

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Local 1700, UAW, and Its International
Union (Chrysler Corp., Sterling 536-2581-3335
Heights Assembly Plant (SHAP))
Case 7-CB-11432

This case was submitted for advice as to whether the International Union, the Section 9(a) representative of the unit employees, and its agent the Local Union, violated Section 8(b)(1)(A) by refusing to provide the Charging Party with information he requested regarding a joint Employer-Union apprenticeship program and the selection process for the program.

FACTS

Under a collective-bargaining agreement between Chrysler Corp. (the Employer) and the International Union, and through a Joint Apprenticeship Committee (JAC), the Employer, the International, and Local 1700, UAW (the Union) jointly administer various apprenticeship programs, herein collectively called the AP. The parties' collective-bargaining agreement states that the JAC should consist of four members appointed by the Union and four members appointed by the Employer, that it must establish a Uniform Apprentice Application and Selection Procedure, and that it must evaluate and select apprentices to be placed in the apprenticeship program. The collective-bargaining agreement further provides that the JAC's acceptance or rejection of applications for apprenticeship shall not be subject to review through the parties' grievance procedure.

Charging Party Martin Ivery commenced his employment at the Employer's Sterling Heights plant in late 1995. He took the apprenticeship test in early 1996 and again in July 1997. Both times, his test scores, when coupled with points for education, prior training, seniority, and the like, exceeded the qualifying score of 135. In October

1996, the administrators of the AP placed his name on its rolls as eligible for placement into the AP. However, Ivery has not been selected for the program. The Unions assert that, although Ivery's score (142) was sufficient to place him on the eligible list, his score was not as high as any of the 400 applicants selected for the program. Ivery asserts that his application was incorrectly scored, e.g., that he was not given proper credit for previous apprenticeship training he received while working for other employers, and that he was denied admission to the program because of his race.¹

In early 1996, before Ivery took the apprenticeship test, the Union gave him a 15-page booklet which described the program. From late 1996 through mid-1997, after he took the test, Ivery asked the Union for additional information about the program and the selection process. Specifically, he repeatedly asked various Union officials for a copy of the 66-page apprenticeship handbook given to apprentices selected for the program, and for a copy of the skilled trades seniority list. He also sent letters to Bob Barsotti, an International Union-appointed member of the JAC, wherein he requested his application file and "all documents pertaining to me" in the possession of the JAC. The Unions did not provide Ivery with either a copy of the handbook or the seniority list. The Unions state that the 66-page handbook is provided only to successful applicants and that it would be expensive to reproduce. The Unions further assert that the 66-page handbook is provided only to successful applicants, and that it would be expensive to reproduce. Additionally, the Unions assert that the seniority list is posted at the plant and, although Ivery has been on extended sick leave, he could visit the plant to examine it. With regard to Ivery's application file,

¹ In addition to the instant charge, Ivery filed a Section 8(b)(2) charge which alleged that the Unions improperly graded his application for the apprenticeship program, and thereby denied him admission to the program. The Region is in the process of investigating that charge. Ivery also filed an EEOC complaint against the Employer alleging that his non-selection constituted racial discrimination within the meaning of Title VII of the Civil Rights Act. On December 18, 1997, the EEOC tentatively dismissed that charge.

Barsotti asserts that he believed Ivery was asking for his employee personnel file, which request he forwarded to the Employer's personnel department, and that nothing in the application file would be helpful to Ivery.

The Unions have held several meetings with Ivery, during which they have explained the apprenticeship selection process, but they have failed and refused to provide the requested information for the reasons set forth above.²

ACTION

We conclude that the International and the Union, as an agent of the International, violated the duty of fair representation toward Ivery by refusing to provide information which Ivery needed to assess whether his application had been properly and fairly considered.

A union that is the exclusive representative of bargaining unit employees is obligated to serve the interests of all the employees without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.³ A union violates its duty of fair representation if its actions are either arbitrary, discriminatory, or taken in bad faith. The union's duty to avoid arbitrary conduct means "at least that there be a reason for action taken."⁴

The Board has held that a union violates its duty of fair representation if it fails to provide information to employees that is necessary to assess whether the union is

² On December 12, 1997, almost a year after his initial request and the same day on which this case was submitted to Advice, the International Union provided Ivery with a copy of the handbook and the seniority list.

³ Vaca v. Sipes, 386 U.S. 171, 177 (1967).

⁴ General Truck Drivers Local 315 (Rhodes & Jamieson, Ltd.), 217 NLRB 616, 618 (1975), enfd. 545 F.2d 1173 (9th Cir. 1976).

properly doing its job as collective bargaining representative.⁵ In Letter Carriers, the Board held that, where an employee has a legitimate interest in information possessed by his bargaining representative regarding his terms and conditions of employment, and the union does not raise a substantial countervailing interest in refusing to disclose it, the refusal to provide the information is unlawful because it is "so far outside a wide range of reasonableness as to be irrational." 319 NLRB at 881-82. In the hiring hall context, the Board has found that a union breaches its duty of fair representation when it refuses to supply job referral information, where the employee's request was reasonably directed toward ascertaining whether he had been properly treated in connection with the operation of the hiring hall.⁶ The employee generally does not have to establish a reasonable belief that he is the object of hostile treatment in order to be entitled to such hiring hall information.⁷

Here, the Unions have refused to provide information that clearly is relevant to enable Ivery to assess whether his application for the apprenticeship program was fairly and properly evaluated. Thus, the first seven pages of the handbook would assist Ivery in determining how the selection process is supposed to operate, and whether the

⁵ See Law Enforcement & Security Officers Local 40B (South Jersey Detective Agency), 260 NLRB 419, 420 (1982) (union must provide employees with copy of the collective bargaining agreement and health and welfare plans); Letter Carriers Branch 529, 319 NLRB 879 (1995) (union must provide employee with copies of her first and second step grievances).

⁶ See Operating Engineers Local 324, 226 NLRB 587 (1976); Operating Engineers Local 513 (Various Employers), 308 NLRB 1300, n.1 and 1303 (1992).

⁷ See Bartenders' and Beverage Dispensers' Union, Local 165 (Nevada Resort Association), 261 NLRB 420, 423 (1982) (in view of potential for union error and discrimination in operation of hiring hall, union must disclose hiring hall records to referral applicants despite record "naked" of evidence of discriminatory treatment).

JAC followed the appropriate procedures.⁸ The seniority list would assist Ivery in determining whether the JAC took into account appropriate seniority placement in making its selections. Ivery's application file, which should contain all documentation considered as part of his application, would assist him in determining whether his application was complete and whether he received appropriate credit for his education and experience. The Unions have not asserted any substantial countervailing interest in non-disclosure of those documents, such as confidentiality or undue burdensomeness concerns. Indeed, the Unions' unreasonable responses to Ivery's information requests lend support to his view that he might not have been treated fairly, and further demonstrate his legitimate interest in the information requested.⁹

Concededly, the Unions apparently do not possess some of this information in their capacity as bargaining representative, but only in their capacity as a participants in the JAC. The JAC is a joint Employer-Union entity, and thus does not itself have a duty of fair representation toward the employees. However, the JAC is not an Amax¹⁰ trust, entirely independent of the Unions and Employer.¹¹ The members of the JAC are the Unions' and

⁸ The remaining pages of the handbook are relevant only to the administration of the program vis-a-vis the selected apprentices, and need not have been provided by the Unions.

⁹ In this regard, Ivery has also charged that an International representative told him, the day before the present charge was filed, that the Unions would no longer give him "any representation," and that another International representative told him, two months later, that the Union "wouldn't do anything for him" because he had Board and EEOC charges pending. The Region has not submitted those 8(b)(1)(A) allegations to Advice, but has determined that at least the latter statement was unlawful.

¹⁰ NLRB v. Amax Coal Co., 453 U.S. 322, 107 LRRM 2769 (1981).

¹¹ International Association of Heat and Frost Insulators (Master Insulators Association), 263 NLRB 922 (1982); ESI, Inc., 296 NLRB 1319 (1989).

Employer's collective-bargaining representatives, and the JAC may act as the agent of either or both parties.¹² Thus, it is entirely appropriate to require the Unions to disclose to the employees they represent all relevant, nonprivileged documents that are in their possession either directly or via the participation of their representatives on the JAC, or that can be obtained from their agent JAC.

Should the Unions raise a legitimate claim of privilege, on their or the JAC's behalf, with regard to any of the documents at issue, [FOIA Exemption 5

.]¹³ At this time, however, the Unions have made no such showing. Given Ivery's legitimate interest in the information, and the absence of any countervailing interest on the Unions' or JAC's part in non-disclosure, the Unions' failure to provide the information in their own or their agent's possession must be termed "irrational" and "arbitrary."

Accordingly, the Region should issue complaint, absent settlement, consistent with the foregoing.

B.J.K.

¹² Iron Workers Local 15 (Associated General Contractors of Connecticut), 298 NLRB 445, 462-463 (1990), enforcement denied on other grounds AGC of Connecticut v. NLRB, 929 F.2d 910, 136 LRRM 2977, 2979-80 (2d Cir. 1991).

¹³ [FOIA Exemption 5 .]